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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,679	06/22/2000	Robert J. Brockway	TER003RA	7502

7590

04/04/2002

Harold C Knecht III
P O Box 28338
St. Paul, MN 55128

EXAMINER

STORMER, RUSSELL D

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 04/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.
09/599,679

Applicant(s)
R J Brockway

Examiner
Russell D. Stormer

Art Unit
3617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 Mar 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 14 Jan 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: Claims 23 and 25 are rewritten as independent claims and therefore in effect are new claims.

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: 1-20
Claim(s) objected to: None
Claim(s) rejected: 21-25 and 28
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
11. ☐ Other:

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Response to Arguments

1. Applicant's arguments filed March 20, 2002 have been fully considered but they are not persuasive.

Election/Restriction:

Contrary to Applicant's arguments, paragraph 2 of the final rejection does give reasons for the restriction, those reasons being that a further search for the method of making the wheel would be required. Any similarities between the method claims and other claims previously filed in the application are irrelevant. It is not clear how Applicant's representative could possibly know that a search and examination of the new claims 26 and 27 could be made without serious burden. The search for newly presented claims 26 and 27 is not required for the remainder of the claims.

Reissue Oath:

While the specification states that there are "a number of ways" of preventing debris from wrapping around an axle, this is not considered to be adequate support for the statement in the oath that the cleat-free area can have the width of any compaction cleat. The patent could not be used to teach such a feature. The reissue oath introduces new matter in the file.

Specification:

The specification provides no support for the language of "wide enough" and "less likely" found in claim 21.

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Rejection of claims 21-25:

The rejection of claims 21-25 under 35 USC 112, first paragraph has not been overcome.

Rejection of claims 23 and 25:

The amendment to claims 23 and 25 would overcome the rejection under 35 USC 112, second paragraph if entered. However, this amendment would require further consideration with respect to the prior art, enablement, new matter, 112 rejections and will not be entered for purposes of appeal.

Rejection of claims 21-25 and 28:

Finley shows a cleat-free area adjacent the edge of the wheel as shown in figure 1. O'Neill et al shows a wheel having a cleat-free area in figure 3. Therefore, such cleat-free area is disclosed.

Interference:

The cleat-free area of the wheel of Greenfield et al does not extend from the inner edge of the wheel as claimed in claim 28 because the barrier 34 is disposed on the inner edge.

Greenfield claims the outer row of cleats to be disposed immediately adjacent the outer edge of the rim. The fact that the significance of this structure is not discussed in detail in the specification is of no relevance. The proposed count claim 28 is of a different scope than the patented claims of Greenfield et al.

An interference will not be declared because Applicant has not claimed the same patentable invention as is claimed in the patent. Further, Claim 28 has been rejected under art.

Application/Control Number: 09599679

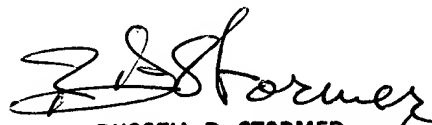
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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703) 308-1113.

rds

April 3, 2002


RUSSELL D. STORMER
PRIMARY EXAMINER 4/3/02